

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

CIVIL CASE NO. 116 OF 2022

LUKOLO COMPANY LIMITED PLAINTIFF

VERSUS

SONGEA MUNICIPAL COUNCIL 1st DEFENDANT

THE ATTORNEY GENERAL 2nd DEFENDANT

RULING

Date: 07/03 & 18/04/2023

NKWABI, J.:

In this Court, the plaintiff is asking this the Court to grant her the following reliefs:

1. Payment of the awarded sum of Tzs. Three billion two hundred seventy-five million nine hundred sixty-nine thousand three hundred ninety-nine hundred cents eight one only (Tzs. 3,275,969,399.81) (VAT exclusive).
2. All the sum of all costs, refunds and interest granted to the plaintiff by the adjudicator.
3. Refund for the sum of Tzs. 16,242,050/= being 50% of the costs of the adjudication incurred by the plaintiff as payment to the NCC after

the 1st defendant's refusal and or neglect to pay that cost for the release of the adjudicator's decision.

4. Commercial interest of 16% on the awarded sum as stated in the forgone paragraph a. herein above payable from the date of the adjudicator's decision to the date of final judgment of this suit.
5. Court interest at the rate of 12% on the sum in a. herein above from the date of the judgment to the date of full and effective payment of the decretal sums.
6. Costs of this suit be paid for by the 1st defendant.
7. Any other relief deemed equitable and just to grant by this honourable Court in favour of the plaintiff.

However, the plaintiff's case was greeted with a preliminary objection having two points of objection. One of them was dropped during submissions therefore the counsel for the defendants submitted on only one which is that:

1. The suit is contravened with section 18(a) (b) and (c) of the Civil Procedure Code Cap. 33 R.E. 2019.

The preliminary objection was disposed of by way of written submissions. Ms. Rehema Mtulya, learned State Attorney, submitted for the defendants.

The plaintiff had her submissions drawn and filed by Dr. Fredrick Ringo, learned advocate.

It was the contention of Ms. Mtulya that section 18 of the Civil Procedure Code is couched in mandatory terms, the plaintiff is required among other things the suit required to be heard and determined by the Court within the local jurisdiction of which the cause of action arose or the defendant is ordinarily resident or carries on business. It was stated, the 1st defendant resides (carries business) in Songea therefore, the High Court at Songea is a proper Court in so far as territorial jurisdiction is concerned and not the High Court Dar-es-Salaam District Registry. Therefore, this Court lacks territorial jurisdiction. Based on the above submission it was prayed that the plaint be dismissed with costs.

Ms. Mtulya referred this Court to **Abdallah Ally Selemani t/a Ottawa Enterprises (1987) v. Tabata Petrol Station Co. Ltd & Another**, Civil Appeal No. 89 of 2017 (unreported) where it was held:

"We think there is only one cause of action for purpose of determining the jurisdiction of the Court and the appellant was bound by his own pleadings."

She insisted that hers is a pure point of law citing **Musika Biscuit Manufacturing Co. Ltd. v Westend Distributors Ltd.** [1969] EA. 696.

Dr. Ringo was not persuaded that this Court has no jurisdiction to entertain the suit. He stated that the preliminary objection is caused by erroneous interpretation of the section. He maintained that the suit does not contravene the provisions of section 18 CPC because, the High Court in the country is one and has unlimited jurisdiction under section 2(1) of the Judicature and Application of Laws Act so it cannot be confined to any local limit under Article 108 (1) of the Constitution of the United Republic of Tanzania, 1977.

The counsel for the plaintiff cited **National Bank of Commerce Ltd v. National Chicks Corporation Ltd & Another**, Civil Appeal No. 129 of 2015 CAT (unreported) where it was stated:

"It is manifest that the High Court is one in this country and it derives its jurisdiction or mandate from either the Constitution or any law to that effect. It is also absolutely clear that it has unlimited jurisdiction and judges of the High

Court are mandated to exercise all or any part of the powers conferred on the High Court. ...

"... it is also clear that the purpose of establishing divisions or registries is to facilitate the administration and dispensation of judicial functions ... We note therefore, that establishment of registries of the High Court in the regions which we administratively refer them as High Court Zones or a Division of the High Court ... is founded on the spirit of expediency ..."

Pressing on the argument that this Court has jurisdiction to entertain the matter, Dr. Ringo submitted that the sub-registry of Songea is administrative in nature, it cannot create the High Court of Songea into a local court and that the objection does not meet the tenets of a point of law as per **Musika's** case supra. He sought to distinguish the case of **Abdallah Ally** (supra).

He also urged that the 1st defendant may request the court to transfer the file to Songea where the cause of action arose if she finds she will be prejudiced, otherwise the same Court sitting in Dar-es-Salaam is competent to determine the matter. It was added that the submissions show she will

not be prejudiced if the proceedings are conducted in Dar-es-Salaam. He prayed the preliminary objection be dismissed with costs.

While reinforcing her position in rejoinder submission, Ms. Mtulya maintained that theirs is a pure point of law as per **Musica's** case (supra). She insisted that the law requires every suit be instituted in a court within the local limits of whose jurisdiction of which cause of action arose or the defendant resides or carries on business or personally works for gain at the commencement of the suit and said it is the duty of the plaintiff to comply with the section. She recited the case of **Abdallah Ally** (supra) to fortify her position that a case should be filed in a court with territorial jurisdiction.

She distinguished the case of **National Bank of Commerce Ltd** (supra) cited by Dr. Ringo. She added that the plaintiff tries to mislead the Court in order to hide some information such as the 1st defendant resides at Songea even the cause of action arose at Songea in order to meet the threshold of the trial Court. She pressed the suit be dismissed with costs.

I readily agree with Ms. Mtulya, if one looks at paragraph 2 of the plaint one will agree that the plaintiff is hiding some information in order to meet the threshold. I quote the paragraph:

2. THAT the 1st Defendant is a local government municipal authority established under the Local Government (Urban) Authorities Act, 1982.

Its known address for purposes of service is:

The Municipal Director

Songea Municipal Council,

P.O. Box 14,

Songea EMAIL: songea.municipal@gmail.com

I have considered this preliminary objection on the point of objection that this Court has no jurisdiction to entertain the matter and I accept the view of the learned State Attorneys that this Court (High Court District Registry of Dar-es-Salaam) has no jurisdiction to entertain the matter. I reject the claim of Dr. Tenga, that the objection is not a pure point of law.

I think it is very undesirable for one to institute a suit away from the required places as per the law. If that is permitted it has undesirable consequences, God forbid. While having District registries of the High Court is designed to enhance access to justice, allowing parties to institute suits away from the required registries may deny justice to some litigants. For instance, a party who has a defendant residing or place of business in Kanyigo Kagera may wishfully institute a suit in Mtwara with intention to make it difficult for the

defendant to appear and defend and the suit may proceed ex-parte to the detriment of the defendant.

It is well known that the laws of procedure work to compliment each other. Therefore, the High Court Registry rules should be interpreted as completing the Civil Procedure Code in as far as filing of suits are concerned. The approach of interpretation of mine, I hope, goes hand in hand with the view of the Court of Appeal in **Abdallah Ally** (supra) and this Court in **Dr. F. Lwanyantika Masha v AG**. Civil Case No. 136 of 2001, HC (unreported) the decision of Manento, J.K. (as he then was). In my view that is also envisaged in the provisions of Article 108 (1) of the Constitution (supra) which provides:

"There shall be a High Court of the United Republic (to be referred to in short as "the High Court") the jurisdiction of which shall be as specified in this Constitution or any other law."

In the premises, the decision in **National Bank of Commerce Ltd** (supra) is distinguishable in the circumstances of this case because that case was in respect of a suit which was to be determined by divisions of the High Court

all of which are based in Dar-es-Salaam. As well each case must be decided according to its peculiar circumstances.

In the case of **Abdallah Ally** (supra), this Court, Chikoyo, J. (as she then was) struck out civil case No. 4 of 2016 for Songea High Court had no jurisdiction to entertain a matter on whose cause of action arose in Dar-es-Salaam. On appeal to the Court of Appeal of Tanzania, the decision of the High Court was upheld and the appeal was dismissed on the ground that the High Court Songea had no jurisdiction to entertain the matter. The Court of Appeal held:

"We firmly think that only suits for immovable property were meant to be filed within the local limits in which such properties are situated. Any other suits as provided under section 18 of the CPC are to be filed where the cause of action arose or where the defendant resides or works for gain."

This Court has no jurisdiction to entertain the matter. Thus, the preliminary objection is sustained. Consequently, the civil case is ruled to be incompetent and is struck out with costs.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 18th day of April, 2023.

